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SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388 (Sub-No. 90)

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
(Buffalo Rate Study)

Decision No. 6

Decided: February 2, 2001

In this first annual round of our 3-year Buffalo Rate Study proceeding, we find that rail line haul rates on traffic transported by CSX and NS into and out of the Buffalo area in the first full year following the June 1, 1999 division of Conrail's assets have, on the whole, declined relative to rates for comparable movements in the prior year. We also find CSX and NS to be in compliance with all of the conditions related to switching that we imposed in the Buffalo area.

BACKGROUND

In a decision served July 23, 1998,[1] we imposed a condition calling for a 3-year study of rail rates in the Buffalo, NY area (the Buffalo Rate Study or the study) following applicants' division of Conrail's assets, which occurred on June 1, 1999 (Split Date). We initiated the study[2] to examine line haul and switching rates for rail movements into and out of the Buffalo

[1] CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Lease/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (Conrail Dec. No. 89). In that decision, we approved, subject to conditions: (1) the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX) and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of the assets of Conrail by and between CSX and NS.

[2] CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Lease/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub-No. 90), Decision
(continued...)

area.[3] We required CSX and NS to submit certain information and requested public comments to develop a more complete record. For the initial 6-month review, we required the carriers to provide all interested parties and the Board's staff with the Conrail, CSX, and NS 100% waybill files (subject to a protective order) for rail movements into and out of the Buffalo area for the period beginning June 1, 1997, and ending November 30, 1999.

In a decision served July 6, 2000,[4] we addressed the pleadings filed in the initial (6-month) phase of the study. In that decision, we explained that CSX and NS appeared to have set out and applied an acceptable methodology for measuring rail line haul rate trends into and out of the Buffalo area for the period preceding and following their division of Conrail's assets, and that we awaited, in the following stages of the study, a full record of public comment on CSX's principal evidentiary submission before finalizing that tentative conclusion.[5] Buffalo Rate Study Dec. No. 4, slip op. at 2 and 8. We also found that CSX and NS had "presented evidence to show that, through the first 6 months following the division of Conrail, those [Buffalo-area] rates

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[2](...continued)
No. 1 (STB served Dec. 15, 1999, and published in the Federal Register on Dec. 20, 1999, at 64 FR 71188) (Buffalo Rate Study Dec. No. 1).

[3] For purposes of the Conrail transaction and the Buffalo Rate Study, the terms "Buffalo area," "Greater Buffalo area," and "Niagara Frontier region" are used interchangeably and are defined as "that area including the New York State counties of Erie, Niagara and those parts of Chautauqua County that lie north or east of CP 58 near Westfield." See Conrail, Decision No. 89, slip op. at 84-85, n.133 and 305-06, n.505; see also Buffalo Rate Study Dec. No. 1, slip op. at 2, n.2.

[4] CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Lease/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub-No. 90), Decision No. 4 (STB served July 7, 2000) (Buffalo Rate Study Dec. No. 4).

[5] Because CSX's principal evidentiary submission appeared in CSX-2, its May 12, 2000 reply statement, a full record of public comment on this document was not developed during the initial phase of the 3-year study.

have, on average, been reduced."[6] Id. at 8. Finally, we found CSX and NS to be in compliance with all conditions related to switching that we imposed in the Buffalo area. Id. at 9.

In this second phase of the study, we required CSX and NS to supplement, by June 30, 2000, the data made available to interested parties and provided to the Board's staff in the earlier phase of the study with 100% waybill data for their respective rail movements originating or terminating in the Buffalo area with waybill dates between December 1, 1999, and May 31, 2000. On July 14, 2000, CSX and NS submitted their reports with respect to this expanded data base, encompassing the first full year following the Split Date (CSX-3 highly confidential version and CSX-3 redacted public version, and NS-3 highly confidential version and NS-3 redacted public version). AES Eastern Energy (AESE) filed comments on August 15, 2000 (AESE-2), and also filed on that date, by letter, a reply to Erie-Niagara Rail Steering Committee's (ENRS) request for additional data. ENRS and Occidental Chemical Corporation (OxyChem) submitted comments on September 13, 2000 (ENRS-3 highly confidential version and ENRS-4 redacted public version, and OXY-1 highly confidential comments and verified statement and OXY-1 redacted public comments and verified statement).[7] On October 13, 2000, the United States Department of Transportation (DOT) filed undesignated reply comments (highly confidential version and redacted public version),[8] CSX filed its CSX-4 reply (highly

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[6] CSX, which inherited the major share of Conrail's Buffalo-area assets, concluded that its rail line haul rates for major movements into and out of the Buffalo area that had pre-Split Date counterparts on Conrail declined 8.9% over the first 6 post-Split Date months when compared to rates for those same movements in the 12 months prior to the Split Date, with rates decreasing on 30% of those movements and increasing on only 7.6% of the movements. Buffalo Rate Study Dec. No. 4, slip op. at 8. NS found that its line haul rates for major movements to and from stations in the Buffalo area since June 1, 1999, were, for the most part, the same or lower than Conrail and/or NS rates for those same movements before June 1, 1999, and that no meaningful conclusions could be made for the remaining non-major movements. Id. at 3-4.

[7] On August 4, 2000, ENRS submitted a letter to the Board requesting that the Board grant an extension of time to file comments and also require CSX and NS to provide additional data to interested parties. CSX and NS filed separate replies to ENRS' requests on August 8, 2000. We granted ENRS' request for a 30-day extension of time to file comments in CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Lease/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub-No. 90), Decision No. 5 (STB served Aug. 10, 2000) (Buffalo Rate Study Dec. No. 5).

[8] DOT had informally contacted Board staff and was told that the Department could follow its traditional approach in Board proceedings of submitting its views after considering the submissions of other parties. DOT stated that it would not object to an opportunity for CSX and
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confidential version and redacted public version), and NS filed its NS-4 reply. And, on November 1, 2000, CSX filed its CSX-5 reply to DOT's comments.

NS' Report on Buffalo-area Rate Trends. NS' second report (NS-3) extends the carrier's initial 6-month study to include data for the first full year following the Split Date. The report, based on NS and Conrail 100% waybill data, describes NS' traffic to and from freight stations in the Buffalo area between June 1, 1999, and May 31, 2000, and compares the rates for those movements with rates for comparable movements performed by Conrail and NS during the preceding 2 years. NS concludes that rates for the majority of its traffic to and from stations in the Buffalo area have either remained constant or declined since June 1, 1999.

NS states that its second report uses essentially the same methodology as the first one. According to NS, its consultant examined revenues from rail line haul movements by Conrail or NS (between June 1, 1997, and May 31, 1999) and by NS (between June 1, 1999, and May 31, 2000) to or from freight stations in the Buffalo area that are currently accessible to NS, directly or by reciprocal switch.

In determining rate trends over the study period, NS considered revenues from "major movements," which it defined as movements of a particular commodity (using a four-digit Standard Transportation Commodity code (STCC) level of detail) between two points (e.g., Buffalo and Atlanta) producing rail line haul revenues of more than $40,000 during the 1-year period from June 1, 1999, to May 31, 2000. According to NS, there were 204 such major movements and they accounted for approximately 92% of the total line haul revenues NS derived from its Buffalo-area traffic in the first full year following the Split Date.

NS then compared the revenue per ton (or per pricing unit, if rates were determined on a "per car" or other basis) of each of the major movements performed by NS during the first full year following the Split Date with the revenue per ton (or per pricing unit) of Conrail and/or NS for comparable movements for each of the 2 years immediately preceding the Split Date. For its present study, NS states that the sources for the pre-Split Date Conrail and NS data are the same as those noted in its first report. NS states that for post-Split Date traffic data, it relied upon its Costed Record File (CRF) for the period June 1, 1999, to March 31, 2000, and upon its Revenue History File for the period April 1, 2000, to May 31, 2000, because NS' CRF for that most recent period was not yet available.

While NS' study indicates that rates have remained the same or declined for the majority of its major movements over the study period, NS states that the available data did not permit meaningful conclusions with respect to rate trends for its remaining Buffalo-area traffic, consisting of about 1300 smaller movements performed by NS between June 1, 1999, and

[8](...continued)
NS to reply to its comments.

May 31, 2000. But this traffic accounted for only about 8% of the total line haul revenues from NS' Buffalo-area traffic during that period, and thus its exclusion does not affect the overall conclusion reached by NS.

CSX's Report on Buffalo-area Rate Trends. To analyze rate trends for Buffalo-area rail traffic on a full-year basis, CSX has used the same methodology we tentatively approved in Buffalo Rate Study Dec. No. 4. CSX reports a general decrease in rates over the 12-month period following the Split Date, consistent with the decrease found for the initial 6-month period. For the full year immediately following the Split Date, CSX states that there was a 10.6% (weighted-average) decrease in rates for CSX movements relative to comparable Conrail movements for the preceding year, which was an even greater reduction than the (weighted-average) decrease of 8.9% CSX found for the first 6 months.

CSX identified 2,373 movements by origin/destination pairs at the four-digit STCC level of which 770 yielded revenues of $20,000 or more. These 770 movements, designated as "major movements" by CSX,[9] generated 95.2% of CSX line haul revenues from traffic originating or terminating in the Buffalo Area in the year following the Split Date. The 770 movements were then disaggregated to the seven-digit STCC level and by business unit, yielding 1,152 unique rail line haul movements. Of those 1,152 moves, 448 could be matched to pre-Split Date Conrail movements during the period June 1, 1998, through May 31, 1999. While these 448 matched movements represent only 39% of CSX's major movements, they generated 61% of the revenue received by CSX from those major movements, and over 58% of CSX's total Buffalo-area revenues.

CSX states that its analysis of the waybill data finds that 34% of the 448 matched movements showed no rate change or changes of less than 2%; 45% reflected rate reductions (including 31% with reductions of 8% or greater); and only 21% had rate increases, of which only 11% were increases of 8% or more. CSX's study concludes that, overall, rates on its Buffalo-area movements during June 1, 1999, through May 31, 2000, decreased by 10.6% relative to rates on comparable Conrail movements during the period June 1, 1998, through May 31, 1999.

CSX indicates that, although time limitations precluded it from performing the kind of in-depth analysis of the factors affecting rates that it undertook for the 6-month post-Split Date period,[10] there was sufficient overlap in the movements in the 6-month and full-year post-Split

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[9] CSX states that a "major movement" could be as small as 8 carloads generating $2,500 per car in revenue in the full year following the Split Date.

[10] In its 6-month study, CSX sought to take into account rate variations based on minimum weights, car ownership, equipment type and size, volume discounts, and differing

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Date periods to determine that the conclusions in its 6-month study with respect to the 341 major movements that recurred throughout the year should hold for the full-year study as well,[11] and that additional adjustments to the 107 major movements appearing for the first time in the full-year study would have little impact on CSX's overall assessment that rail rates for Buffalo-area CSX movements had decreased by 10.6% in the first full year following the Split Date relative to rates for comparable Conrail movements in the prior year.[12]

CSX thus asserts that, by the end of its first full year of handling traffic in the Buffalo area, it had established rates for movements originating or terminating in the Buffalo area that were, on average, lower than those charged by Conrail during the year immediately preceding the Split Date. CSX contends that this result is significant because it is the year immediately following the Split Date that is the period most likely to reflect pricing changes directly attributable to the Conrail transaction, since, as time passes, the impact of the transaction itself on rail rate levels will diminish as other economic factors affecting rail transportation rates, such

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[10](...continued)
patterns of mileage allowance payment, and explained that additional problems that had to be overcome were related to the fact that the underlying Conrail and CSX waybill data were not consistently developed. See Buffalo Rate Study Dec. No. 4, slip op. at 7.

Here, CSX and NS were required to submit their full year reports to us by July 14, 2000, shortly after the waybill data for the period ending May 31, 2000, became available to them, and thus limiting the additional analyses that could be performed. As discussed below, we will allow the railroads (and other parties) more time to assess the waybill data in the second year of the study.

[11] CSX states that 341 (of the 448) full-year major movements that matched to Conrail pre-split movements were recurring movements that were included in the 6-month study, that 197 of the 341 had no rate change or changes of less than 8%, and that those rate changes all took place in the first 6 months following the Split Date. The other 144 recurring, matched movements reflected rate increases or decreases of more than 8% – 35 increases and 109 decreases – and those changes had also occurred and been analyzed in the 6-month study.

[12] CSX states that the remaining 107 of the 448 full-year major movements that matched to Conrail pre-Split Date movements were *new* movements and thus not fully addressed in its 6-month study, and that only 46 of those movements showed rate changes of 8% or more that would have received further analysis had the time been available – 30 rate decreases and 16 increases. CSX concluded that any adjustments suggested by further analysis of those few rates would have little impact on its overall assessment that, on a weighted average basis, rail rates for CSX's Buffalo-area traffic in the first full year following the Split Date declined by 10.6% when compared to rates for comparable Conrail movements in the year immediately preceding the Split Date.

as fuel cost increases, inflation, and the overall level of economic activity, assume greater importance.

Comments of Erie-Niagara Rail Steering Committee. ENRS is an ad hoc committee representing various interests in the Niagara Frontier region. It maintains that it would be premature for us to draw any definitive findings now regarding the trend in rail rates and services for rail shippers in the Buffalo area. In particular, it argues that the CSX study is seriously flawed because CSX has not provided sufficient data and information to allow a meaningful comparison between rates for comparable Buffalo-area traffic handled by Conrail before June 1, 1999, and by CSX after that date. ENRS argues that the CSX study omits over 60% (by revenue) of the major movements to and from the Buffalo area by excluding from consideration traffic for which a comparable Conrail movement could not be found.

ENRS contends that the CSX data limitations preclude any meaningful comparison of post-Split Date CSX rates to rates in effect prior to that date, and that the best that can be accomplished now is a year-by-year comparison over a 3-year period of the trends in rates for both CSX and NS during the remaining years of the 3-year study. ENRS states that we should require the carriers to submit in the coming years sufficient comparable data to permit a complete analysis of relevant CSX and NS Buffalo-area rail rates for the 12-month periods ending May 31, 2001, and May 31, 2002.

Further, ENRS states that NS and CSX refused to provide the additional information requested by ENRS to ensure an accurate picture of rates for this first year of study.[13] With

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[13] By letter dated August 4, 2000, ENRS noted that, in attached letters to CSX and NS, ENRS had requested that the carriers make available to it all of the waybill data fields that were made available by the railroads under protective order in the main Conrail control proceeding, including fields identifying the consignor and consignee involved in the movement. In its letters to the carriers, ENRS also suggested to CSX and NS that its plans for this new data might include disclosure of the waybill data to Buffalo-area shippers to verify that the movement was in fact to or from a facility in the Buffalo area and to determine the accuracy of the rate levels. ENRS stated that, to permit this process of verification, the waybill data now designated as "Highly Confidential" under our protective order would have to be redesignated as "Confidential."

By separate letters dated August 8, 2000, CSX and NS strongly objected to providing ENRS the data it had requested, noting that these data would be costly to produce and that ENRS was mistaken in its belief that these data had been provided to interested parties in the main Conrail proceeding. They noted that DOT had not found it necessary to request any additional data fields to conduct its analysis of Buffalo-area rate trends. They also strongly objected to ENRS' suggestion that they agree to designate waybill data as "Confidential." NS explained that (continued...)

respect to NS, ENRS asserts that NS has apparently obtained little additional new traffic as a result of its acquisition of Conrail's assets in the Buffalo area. ENRS argues that NS' new traffic, unlike the traffic NS was handling prior to the acquisition of Conrail, has experienced significant rate increases, and that this reinforces its contention that we must conduct this study of traffic for the full 3-year period after June 1, 1999.

Comments of Occidental Chemical Corporation. OxyChem produces chlorine, caustic soda, and other products at its Niagara, NY plant. Before the Split Date, the plant was rail served solely by Conrail, and it is now served solely by CSX. OxyChem complains that it has not benefitted from any rail rate reductions on its Niagara Falls traffic during the past year and that CSX has substantially increased some of its freight rates and has indicated that it will increase some of them further. Thus, OxyChem argues that the results from CSX's full-year rate study do not reflect OxyChem's experience in Niagara Falls. OxyChem further argues that the combination of rail service problems and increased rail rates have forced it to struggle to maintain its position in many markets.

OxyChem argues more broadly that the CSX full-year rate study is neither valid nor representative of all rail users in the Buffalo area, that the results are heavily influenced by a limited number of commodities, and that CSX's finding of rate reductions for Buffalo-area rail traffic is largely the result of increased rail competition, but not for the component of the movement in Buffalo or Niagara Falls.

OxyChem states that its access to markets would be improved dramatically by use of alternative carriers and routes involving Delaware and Hudson Railway Company, Inc. (D&H), Canadian National Railway Company (CN), or Canadian Pacific Railway Company (CP). OxyChem contends that it has the right to switching access to D&H (now CP) under longstanding arrangements that predate the Conrail transaction and appear unrelated to any condition we imposed on the transaction. OxyChem also argues that it has been granted switching access to CN, CP, and NS through two switching conditions applicable to the Buffalo

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[13](...continued)
waybill data is extraordinarily commercially sensitive. As but one example, it noted that there are instances in which individual rail customers do not know the rates for their own shipments when those rates are paid by some other party, and that divulging this sensitive commercial information would be highly damaging to the private commercial process.

In this regard, AESE explained, in a letter received August 16, 2000, that it, as a shipper that receives coal and other commodities at a location within the Buffalo Rate Study area, could suffer competitive harm if CSX and NS waybill data were reclassified as "Confidential" and shared with employees of AESE's competitors.

area that we imposed in the Conrail proceeding,[14] that it has been denied this switching access by CSX, and that potentially competing railroads, including CP, CN, and NS, have shown little interest in providing rail service to its Niagara plant. OxyChem states that CSX provides the opportunity for a switching service for NS under the condition imposed in ordering paragraph 37 in Conrail Dec. No. 89, but that this service should be available under that condition to CN and CP as well. OxyChem states that CSX has also refused to grant switching access to CN or CP under the condition imposed in ordering paragraph 32 in Conrail Dec. No. 89. OxyChem requests that we require CSX to comply with these switching conditions and provide appropriate switching access to OxyChem's Niagara Falls plant for CN, CP, and NS.

Comments of AES Eastern Energy. AESE operates coal-fired electric generating facilities in New York, including a plant at Somerset in Niagara County, NY. AESE states that one of the commodities shipped to Somerset is limestone, which is used to reduce air pollution from flue gases. AESE uses approximately 160,000 tons of limestone per year at Somerset, which, following the Split Date, had been delivered by CSX in weekly 70-car trains of limestone between April and November at an acceptable rail rate. AESE argues that rail transportation should be the most cost-effective means of delivering this large volume of the commodity to its plant but that, when CSX proposed new and substantially higher contract rates that were to go into effect on June 1, 2000, and was unwilling to consider a lower rate, AESE was forced to shift all of its limestone shipments from rail to truck. AESE states that this shift to truck was at a higher transportation cost than before, and was associated with the additional fuel and environmental costs inherent in large volume truck movements.

AESE points out that, even if it had accepted CSX's proposed June 1, 2000 rate increase, the increase would not have been reflected in this year's rate study, which only examined rates in effect though May 31, 2000. Further, because AESE chose not to accept the proposed increase, and instead shifted all of its limestone traffic to truck, CSX's proposed higher rate will not be reflected in the carrier's subsequent reports. AESE therefore requests that we modify our reporting requirements in this proceeding by requiring CSX and NS to report: (a) not only rate changes that are in effect as of the end of the reporting period, but also those pending on that date; and (b) reductions of greater than 50% in traffic levels for any origin and destination pair movement, along with an explanation of any change in the rates for such movement.

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[14] These two conditions are as follows: (ordering paragraph 32) CSX must adhere to its agreements with CN and CP that provide for lower switching fees in the Buffalo area and increased access to these carriers for cross-border, truck competitive traffic; and (ordering paragraph 37) the $250 maximum reciprocal switching charge provided for in the National Industrial Transportation League (NITL) agreement must be applied to certain points in the Niagara Falls area for traffic using International Bridge and Suspension Bridge, for which Conrail recently replaced its switching charges with so-called "line haul" charges. See Conrail Dec. No. 89, slip op. at 178.

Reply Comments of United States Department of Transportation. DOT used the 100% rail waybill data submitted by CSX and NS to perform its own study of rail rate trends in the Buffalo area. Employing the same general analytical approach used by CSX and NS, DOT found that average rates for both CSX and NS line haul movements into and out of the Buffalo area declined between the year preceding the Split Date and the year following it. DOT states that its conclusion holds only for that category of traffic with comparable movements in each of the 2 years, and that the large amount of post-Split Date CSX traffic without a comparable pre-Split Date movement makes it more difficult to reach conclusions about that carrier's rate changes. Further, DOT states that analyses of data from future years will be required to determine a trend in rates with confidence. Finally, DOT suggests that, because changes in rail service quality could affect the real value of service provided to shippers, the Board, as this proceeding continues, may wish to consider service information, if relevant to the evaluation of rate trends. DOT expects that more rate and service information will be available as CSX and NS refine their operations in the Buffalo area, so that a more complete and thorough analysis of rail rates in the region can be made.[15]

DISCUSSION AND CONCLUSIONS

Overview

This decision completes the first annual round of our 3-year Buffalo Rate Study proceeding. As explained below, CSX and NS have developed a reasonable methodology that enables them to use rail waybill data to calculate year-to-year rate changes for those rail line haul movements into and out of the Buffalo area that occurred in both the year immediately preceding and following the June 1, 1999 division of Conrail's assets. CSX, NS, and DOT have appropriately applied this methodology to show that rail line haul rates on traffic transported by CSX and NS into and out of the Buffalo area have, on average, declined relative to rates for comparable movements in the prior year. We find the criticisms by various parties of the methodology used by CSX, NS, and DOT, and of these results, to be misplaced. We consider and reject requests and suggestions that, in upcoming rounds of this proceeding, we should require CSX and NS to modify or expand the data that they have been supplying the parties and/or change the designation of the railroads' waybill data submissions, under our protective order, from "Highly Confidential" to "Confidential." We do not agree with AESE's claim that a proposed CSX rate increase for a specific movement into AESE's Niagara Falls plant that resulted in the entire movement shifting to truck transport is an example of unbridled rail market power, and we explain why the data that AESE requests that we require the railroads to provide would expand this proceeding well beyond its intended purpose. We reject OxyChem's claim that it has been denied relief under the conditions related to switching that we imposed in the Buffalo area, and find CSX and NS to be in compliance with those conditions. Finally, we

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[15] DOT states that, in reaching its conclusions, it reviewed the reports filed by CSX and NS as well as the comments filed by ENRS. DOT indicates that it offers no comment on the more firm-specific issues raised by OxyChem and AESE.

continue this proceeding and set out a procedural schedule governing the next round of submissions.

Rail Rates for the Buffalo Area Have Declined Overall

CSX and NS have developed a reasonable methodology that enables them to use rail waybill data to calculate year-to-year rate changes for those rail line haul movements into and out of the Buffalo area that occurred in both the year immediately preceding and following the Conrail Split Date. CSX and NS have demonstrated that rail line haul rates on traffic transported by CSX and NS into and out of the Buffalo area have, on average, declined relative to rates for comparable movements in the prior year, with CSX showing a 10.6% (weighted-average) decrease in its rates, and NS showing that rates have declined or remained the same for the majority of its major movements over the study period.

DOT's own analysis confirms this result.[16] With respect to CSX's post-Split Date major movements into or out of the Buffalo area for which a pre-Split Date matching movement was available for comparison, DOT found rate declines on 71% of the traffic and rate increases on

[16] While applying the same broad analytic approach used by CSX and NS, DOT made what it described as more realistic city-pair matches that enabled it to assess rate changes for movements excluded by CSX's more exacting match criteria. As a result, DOT's study included an additional 19,000 carloads and nearly $7 million in revenue beyond that included in the CSX study. On reply, CSX holds to its original matching criteria, stating that "it is preferable to compare rates on a smaller number of *truly comparable* movements than to compare rates on a larger number of *similar* movements." CSX-5 at 5. We need not rule on this technical issue here, as the results using either matching criteria are nearly identical.

DOT did not have access to CSX or NS marketing personnel to determine the actual pricing basis for various movements. Typically, some commodities, like coal, are priced on a "per ton" basis; others, such as certain hazardous chemicals, are often priced on a "per carload" basis; and TOFC/COFC movements are often priced on a "per trailer" or "per container" basis. Thus, without access to this information, and for reasons of simplification, DOT used changes in revenue per carload from one period to the other as its primary surrogate for customer rates.

Finally, because DOT sought both to analyze the CSX and NS data in a uniform manner and to capture more rather than less traffic that had a corresponding pre-Split Date move, it defined commodity-specific movements at the 4-digit STCC level (CSX had used 7-digit STCCs while NS had used 4-digit STCCs) and applied the $20,000 "major movement" threshold to both CSX and NS traffic (CSX had used a $20,000 threshold while NS had used a $40,000 threshold).

the remaining 29%.[17] For the traffic in this study set, DOT found that CSX's Buffalo-area revenue per car in the year following the Split Date was 13.3% lower than in the prior year. With respect to the smaller share of Buffalo-area major movements handled by NS, DOT found rate declines on 67% of the traffic, and rate increases on the remaining 33%, with revenue per car for NS' traffic in this study set reduced by 0.6%.

DOT, AESE, OxyChem, and ENRS express concern over the amount of post-Split Date traffic, most of it on CSX, for which there are no comparable pre-Split Date movements. Nevertheless, CSX's study of comparable moves encompasses 52% of the carloads and 58% of the revenues for all CSX post-Split Date movements,[18] and DOT's more expansive matching criteria have raised these figures somewhat with respect to CSX movements. The DOT study also comprises nearly 83% of all NS post-Split Date traffic and revenue in the Buffalo area.

CSX has explained the lack of comparable movements for certain of its post-Split Date traffic by noting that rail traffic patterns do not remain the same from year to year. This would be particularly so in the year following implementation of the Conrail transaction, with the emergence of new, post-Split Date routings over CSX. Traffic patterns also routinely change as a result of shippers' sourcing options, or changes in customer base or products. We find that the inability to find exact matches for many post-Split Date movements is not a serious deficiency of these studies, but rather a reflection of marketplace dynamics. And, although ENRS and OxyChem have raised a number of technical criticisms of the CSX and NS studies, we find that these criticisms are not valid, and that the studies are generally sound.[19]

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[17] Many of the figures we report on here were omitted from the redacted public version of DOT's submission, but were included in CSX's non-confidential reply (CSX-5) to DOT. These figures are of a general nature and do not appear to us to be commercially sensitive information.

[18] The CSX matching sample represents even higher percentages of its post-Split Date carloads and revenues associated with major movements. Thus, ENRS is wrong in stating that "CSX excluded from its study over 60% (by revenue) of the major movements to and from the Niagara Frontier." ENRS-4 at 3.

[19] ENRS is incorrect in suggesting that the inability to find pre-Split Date matches is linked to changes in gateways (i.e., to the locations at which two joint line rail partners interchange freight) on interline moves. CSX and NS have explained that their matches were made on the basis of origin and final destination, not gateways.

ENRS is also incorrect in suggesting that the matched movements routinely omit revenue information from the interline partners of CSX, NS, and Conrail, and thus cannot be fairly used to measure rate changes. CSX and NS have explained that *all* of the revenues from interline

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We encourage NS and CSX to examine DOT's methodology for dealing with the different city codes or abbreviations used by CSX, NS, and Conrail for the same cities. We recognize the inherent difficulties in matching current movements with earlier movements, and we also recognize that some, likely many, current rail movements simply have no prior counterpart. However, we share DOT's hope that "in the next phase of this proceeding more observations will be available as CSX and NS refine their operations in the Buffalo area, so that a more complete and thorough analysis of rail rates in the region can be made." DOT reply comments at 7.

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[19](...continued)
movements were routinely included in the data, and described the few instances in which revenue for an entire interline movement was not available.

Finally, ENRS is incorrect in asserting that a significant share of Buffalo-area rail revenues computed by it in the original Conrail proceeding are missing from the data submitted by CSX and NS. The railroads have explained that they have only included data for Buffalo-area rail movements originated or terminated by Conrail, NS, and CSX, and properly omitted both movements through Buffalo by those carriers and movements originating or terminating in the Buffalo area without their involvement as line haul carriers. Further, ENRS' Buffalo-area revenue estimates in the original Conrail proceeding were based on the 1995 rail waybill sample, while CSX and NS base their studies on more recent waybill information.

OxyChem's concern that the railroads' studies are unduly influenced by rate changes in a few commodity groups, such as autos, coal, and chemicals, is misplaced. It does not seem unusual or unreasonable to us that commodities comprising a significant component of CSX's Buffalo-area rail traffic also will disproportionately affect the overall level of CSX's Buffalo-area rates. In any event, reflecting this concern, CSX notes that weighted average rate changes, based on carloads moved, were computed by the railroads to determine their overall results.

OxyChem's claim that rate changes on certain auto movements were arbitrarily assumed to be zero is also unfounded. CSX's use of information from marketing representatives to adjust erroneous rate changes to zero on several auto movements is valid. The movements in question were priced on a joint rate basis pre-Split Date and on a form of multi-factor pricing following the Split Date. A zero rate change was assigned to the movement to reflect the fact that, as verified by marketing representatives, CSX established rates at the same level as Conrail's portion of the prior joint rate. Further, CSX explains that 50 of the 83 adjustments to zero were changes that eliminated what would have been otherwise improperly measured as rate *reductions*.

No Modifications of the Railroads' Data Submissions Are Required

AESE and ENRS request that we modify the data submissions that we require of CSX and NS. DOT suggests that, because changes in rail service quality could affect the real value of service provided to shippers, we may wish to consider, as this proceeding continues, service information, if relevant to the evaluation of rate trends. We discuss, in turn, why each of these requests is not granted.

AESE. The premise underlying AESE's request that additional data requirements be placed on CSX and NS is not valid. AESE specifically argues that: a) CSX has exercised market power by proposing to raise its rates for limestone movements to AESE's Niagara Falls plant and forcing all of that traffic to shift to trucks; and b) this exercise of market power will not be reflected in next year's data submission by the railroads, because no traffic will be moving at the higher rate proposed by CSX.

While AESE presents the diversion of this traffic from rail to truck as an exercise of market power, this diversion simply illustrates effective competition at work. A firm with newly acquired market power will attempt to profitably increase prices, and use of a service may be reduced as the price rises. This process does not describe the situation here, however, where usage (i.e., rail movements of limestone to AESE's plant) has been reduced to *zero*. CSX has explained that the loss of *all* of AESE's limestone traffic underscores the fact that CSX did not have sufficient market power to earn a reasonable profit on the movement or even to retain the traffic. By rejecting CSX's rate proposal and diverting all of the traffic from rail to truck, AESE exercised one of its competitive alternatives.[20]

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[20] CSX states that Conrail agreed to transport the limestone using older, excess hopper cars in order to generate some cash flow from its underutilized equipment. CSX understood from Conrail's Marketing Director, who had joined CSX, that this move was not profitable, but CSX continued to move the traffic for 1 year under the existing Conrail rate to see if it could improve the profitability of the movement.

Ultimately, CSX (working with AESE) was unable to find the necessary efficiencies to make the move mutually beneficial. The movement required more equipment than initially anticipated, and CSX was required to divert hopper cars from more profitable traffic to the limestone shipments. The additional cars required and the longer-than-average time needed for unloading made the movement unprofitable at the existing rate. Thus, CSX offered AESE the option of providing its own equipment at the existing rate, or accepting an increased rate to cover the cost for CSX to acquire additional equipment. In an unsuccessful attempt to retain AESE's limestone business, CSX also offered a rate factor to the Buffalo & Pittsburgh Railroad, Inc. (BP), for a possible CSX/BP move from a BP-served quarry using BP equipment.

Reflecting its experience with these limestone movements, AESE requests that we require CSX and NS to report: 1) not only rate changes that are in effect as of the end of the reporting period, but also those still pending on that date;[21] and 2) reductions of greater than 50% in traffic levels for any origin and destination pair movement, accompanied by an explanation of any change in the rates for the movement. This request is not granted. The additional reporting requirements requested by AESE would take this proceeding well beyond its intended scope, which is to study the general trend in rates that shippers are paying to move traffic into and out of the Buffalo area. We do not intend for this study to evolve into a series of individualized rate proceedings, with the carriers required to explain and defend many of the rate changes they implement for their Buffalo-area traffic. It is not a study seeking to explain the underlying reason behind, and the results of, each and every rate change in the area. Nor is it a study of "proposed" rates, which no customer may ever pay and under which no traffic may ever move. And without a sufficiently strong reason, which we do not have here, we will not require the railroads to reveal highly sensitive commercial negotiation stances – i.e., rate proposals that are not yet and might never be operative.

Finally, the data and reports submitted to the Board by CSX and NS are only one component of the evidentiary record in this proceeding. Under the existing procedure, comments of shipper parties, such as AESE and OxyChem, are part of that record as well. Shippers are in a better position to make an effective presentation of specific concerns about rail rate changes to us. Thus, it would be unnecessary and burdensome to impose such reporting requirements on the carriers.

ENRS. In letters to CSX and NS that were attached to, and used as a partial rationale for, ENRS' request for an extension to file its comments, ENRS requested that CSX and NS append consignee and consignor fields to their waybill data submissions to facilitate comparisons of rates before and after the Split Date. ENRS suggested to the railroads that its plans for use of these new data might include disclosure of the waybill data to Buffalo-area shippers to verify that a particular movement did in fact involve traffic moving to or from the Buffalo area and to verify the accuracy of the rate level. ENRS stated that, to permit this process of verification, the waybill data now designated as "Highly Confidential" under our protective order would have to be redesignated as "Confidential."

It is unclear whether ENRS intended its submission of these letters (to CSX and NS) to be a request that we impose this new data requirement and alter the classification of the waybill

[21] NS states that AESE, in raising a concern over the timing of CSX's proposed rate increase (i.e., it would have gone into effect the day after the end of this year's reporting period) appears to misconstrue the nature of the data the railroads now report. CSX and NS do not present a "snapshot" of the rates that are in effect as of May 31 of a particular year. Instead, as we directed, the railroads present waybill data representing 100% of the movements that have taken place throughout the yearly reporting period.

data under our protective order. Because parties have reacted strongly to this request, we will discuss it here.

CSX and NS have vigorously objected to their being required to produce this information. They explain that ENRS is mistaken in its belief that these data had been provided to interested parties in the main Conrail proceeding, and they noted that DOT had not found it necessary to request any additional data fields in order to conduct its own analysis of Buffalo-area rate trends.

CSX and NS also strongly object to ENRS' suggestion that they agree to redesignate the waybill data as merely "Confidential" so that ENRS' consultants could share this commercially sensitive information with shipper employees. AESE also has explained that a shipper such as itself could suffer competitive harm if CSX and NS waybill data were shared with employees of the shipper's competitors.

ENRS is incorrect in contending that no meaningful results can be reached from the study absent highly sensitive consignor/consignee information. The purpose of this study is to determine the impact of the transaction on rates generally in the Buffalo area, not to study shipper-specific rates. Further, even if the consignor/consignee information sought by ENRS had the potential to identify some additional matches for inclusion in the study, such an in-depth movement-by-movement and shipper-by-shipper analysis would go well beyond what we intended in this proceeding. Such an expanded effort would also introduce additional issues relating to confidential information concerning the volumes, routings, commodities and service terms for every customer originating or terminating traffic in the Buffalo area.

Disclosure of such shipper-specific information in this proceeding is unwarranted. It is not in the interests of shippers or carriers, and there are no shippers or carriers who have expressed support for that approach. CSX and NS strongly object to the ENRS request that they provide this highly sensitive consignor/consignee information, and ENRS has not submitted a single statement from any of its members supporting such a proposition. One shipper has unequivocally opposed the potential disclosure of such information. Absent a sufficiently strong reason, which is clearly not present here, shippers and railroads are entitled to have the confidentiality of their transportation arrangements protected.

DOT. DOT has suggested that, because changes in rail service quality could affect the real value of service provided to shippers, we may wish to consider, as this proceeding continues, service information, if relevant to the evaluation of rate trends.

However, as described in more detail in our decision addressing the pleadings filed in the first annual round of the Conrail General Oversight proceeding,[22] CSX and NS have substantially resolved their transitional service problems. The system-wide service problems that were unfortunately the result of the early stages of the integration of Conrail into CSX and NS, and which caused serious and significant concerns for us, for the railroads, and, most notably, for their customers, are near an end. But, as we noted earlier in this proceeding, even when the transition was going poorly, and service problems were widespread, there was never any evidence that service deterioration in the Buffalo area was the result of any new market power conferred by the Conrail transaction on CSX and NS, and through which the railroads could, in lieu of enhancing profitability by raising rates, choose to achieve that goal by lowering costs through a strategy of steadily declining service levels. Instead, the service problems were system-wide, and resulted in significant costs for both the railroads and their customers.[23] We continue to believe that the proper forum to address the service concerns of Buffalo-area shippers is our Conrail General Oversight proceeding.[24] Further, the Conrail General Oversight proceeding now encompasses our Buffalo-area Infrastructure Proceeding,[25] which provides a forum for addressing those specific concerns of Buffalo-area shippers that link less than adequate rail service to insufficient rail infrastructure.

OxyChem's Chemical Traffic Rate Study and Switching Concerns Are Unfounded

OxyChem's major interest in this proceeding appears to be to gain switching access at low rates to CN and CP for certain of its cross-border chemical movements. Nonetheless, it also has offered criticisms of the rate studies conducted by CSX and NS. Certain of these criticisms have already been addressed in this decision. We discuss the remainder here, and then will address OxyChem's claims with respect to Buffalo-area switching, where we find that there is no evidence of noncompliance by CSX or NS with their Buffalo-area switching obligations.

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[22] See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company–Control and Operating Lease/Agreements–Conrail Inc. and Consolidated Rail Corporation (General Oversight), STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 5 (STB served Feb. 2, 2001).

[23] See Buffalo Rate Study Dec. No. 4, slip op. at 5.

[24] See Buffalo Rate Study Dec. No. 4, slip op. at 6.

[25] See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company — Control and Operating Leases/Agreements — Conrail Inc. and Consolidated Rail Corporation (Buffalo Area Infrastructure), STB Finance Docket No. 33388 (Sub-No. 93) (STB served Feb. 2, 2001).

Remaining Rate Study Criticisms. OxyChem contends that the CSX study is flawed because its results for chemical traffic do not reflect OxyChem's own experience. While the CSX study shows an overall decrease in rate levels for chemical traffic, OxyChem states that there has been no change in rates on the majority of its movements, with some increases on the remainder. Thus, OxyChem asserts that, if chemical rates did in fact decline overall, then rates must have declined dramatically for the other Buffalo-area chemical shippers, because OxyChem has not experienced any rate reductions on any shipments since CSX replaced Conrail as its origin carrier at Niagara Falls.

OxyChem does not provide much information on the increases it claims it experienced (such as the overall average increase) or indicate whether they were the result of previously agreed upon escalations, cost recovery measures, changes in service terms or other non-transaction related reasons. Further, the statement that chemical rates declined overall does not imply that rates for each shipper declined. OxyChem's admission that the majority of its rates remained unchanged is not inconsistent with the overall decline in rates CSX's study found for its chemical movements and is consistent with CSX's claim that it adopted the Conrail tariff and contract rates in effect on the Split Date, subject to existing terms and escalation provisions, in most cases.[26]

Other criticisms of the railroads' rate studies raised by OxyChem are also misplaced. OxyChem's suggestion that the rate reductions on certain Buffalo-area rail movements are not due to "competition in Buffalo," but to competition "at the origin," does not alter the fact that they are rate reductions enjoyed by Buffalo-area shippers. Similarly, OxyChem's claim that rate reductions for certain of its competitors' chemical movements could be the result of lower post-Split Date switching charges does not alter the fact that the rates are lower, or that the lower switching charges are the direct result of conditions we imposed on the original Conrail transaction.

Switching. While OxyChem contends that it has the right to switching access to D&H (now CP) under longstanding arrangements that predate the Conrail transaction, it has not explained how these arrangements are related to any condition we imposed on the transaction. CSX, which succeeded to Conrail's interests in this matter, states that it is fully in compliance with those arrangements while OxyChem argues that CSX is not. This proceeding is not the proper forum to adjudicate this dispute, and we will take no action on it here.

OxyChem's arguments with respect to other Buffalo-area switching arrangements are not entirely clear. It does not reference at all our decision in the Conrail proceeding denying its

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[26] CSX has filed under seal, and subject to our protective order, what appears to be a cogent explanation as to why OxyChem's Buffalo-area post-Split Date rail rate changes may differ from those of other Buffalo-area chemical shippers. <u>See</u> CSX-4, Highly Confidential version, at 16.

request that we expand our Buffalo-area switching conditions to encompass certain OxyChem movements,[27] so it does not explain how the relief it is requesting here is different from the request for relief that we have already considered and denied. As we understand it, OxyChem's new argument is that it has been granted switching access to CN, CP, and NS through two switching conditions applicable to the Buffalo area that we imposed in the Conrail proceeding;[28] that it has been denied this switching access by CSX; and that potentially competing railroads, including CP, CN, and NS, have shown little interest in providing rail service to its Niagara plant. OxyChem does acknowledge that CSX provides the opportunity for a switching service for NS under <u>Conrail Dec. No. 89</u>, ordering paragraph 37, but that this service should be available under that condition to CN and CP as well. OxyChem also states that CSX has refused to grant switching access to CN or CP under <u>Conrail Dec. No. 89</u>, ordering paragraph 32. OxyChem requests that we require CSX to comply with these switching conditions and provide appropriate switching access to OxyChem's Niagara Falls plant for CN, CP, and NS.

OxyChem's interpretation of <u>Conrail Dec. No. 89</u>, ordering paragraphs 32 and 37 is incorrect. Ordering paragraph 32 concerns CSX's switching arrangements with CN and CP, and is limited to "cross-border, truck competitive traffic." CSX has explained that its settlements with CN and CP, which we imposed as ordering paragraph 32, provide for lower switching charges in the Buffalo area for the Canadian carriers, and that the agreements apply only to truck competitive traffic, to and from certain territories, that did not, at the time of the settlements, move by rail. OxyChem has made no claim or showing that the chemical traffic it wishes to bring under the umbrella of that condition satisfies that criterion.

With respect to ordering paragraph 37, we have explained that:

> CSX and NS have agreed to mitigate the market power they will inherit from Conrail at exclusively served points where Conrail provides switching services. We find that **the terms of that agreement, as they apply to reciprocal switching**, should be applied to those points in the Niagara Falls area where Conrail recently replaced its switching charges with equivalent "line haul" charges, and to those movements to which the switches and line haul rates applied (i.e., movements using International Bridge or Suspension Bridge).

<u>Conrail Dec. No. 89</u>, slip op. at 87, emphasis added. In a later decision in the Conrail proceeding, in response to a request for relief by OxyChem, we explained that the

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[27] <u>See</u> <u>CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Lease/Agreements – Conrail Inc. and Consolidated Rail Corporation</u>, STB Finance Docket No. 33388, Decision No. 124 (STB served May 20, 1999) (<u>Conrail Dec. No. 124</u>), slip op. at 4-6.

[28] <u>See</u> <u>supra</u> note 14.

procompetitive switching access offered by this condition "is restricted to traffic moving via the Niagara River bridges to and from points in the Niagara Falls area." Conrail Dec. No. 124, slip op. at 4. Here, we further explain that this condition, because it is governed by "the terms of the [NITL] agreement, as they apply to reciprocal switching," applies *only* to switching access by and between CSX and NS. Thus, CSX is not required by ordering paragraph 37 to provide switching access to CN or CP at reduced rates for OxyChem's cross-border movements at issue here, and we will not expand the condition at this late date to encompass switching by CN or CP. Thus, we deny OxyChem's request for relief, and we conclude that CSX and NS are in compliance with all conditions related to switching that we imposed in the Buffalo area.

The Procedural Schedule

We believe that certain of the parties' concerns over the CSX and NS full-year rate studies is linked to the unduly short time period allowed for the railroads to process their reports and for other parties to examine the waybill data. The post-Split Date waybill data became available near the end of June 2000, and the railroads' reports were due July 14, 2000. While CSX and NS have explained that their analyses were limited by this time constraint, neither chose to request an extension of the filing schedule. We will remedy this problem in the procedural schedule set out below that will govern the parties' submissions in the upcoming second full year of this 3-year Buffalo Rate Study proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. All requests that we modify or expand upon the required CSX and NS data submissions, and other requests for affirmative relief, are denied.

2. The 3-year Buffalo Rate Study proceeding will continue, in accordance with the following schedule: updates of the carriers' rail 100% waybill files for rail movements into and out of the Buffalo area for the period ending May 31, 2001, should be made available, subject to the protective order in this proceeding, to all interested parties and to Board staff by June 30, 2001; CSX and NS comprehensive filings are due by August 20, 2001; comments from other parties are due by September 24, 2001; and CSX and NS replies to comments are due by October 12, 2001.

3. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary